

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MUNICIPAL BOUNDARY ADJUSTMENT UNIT

In the Matter of D-480  
Ghent/Grandview Township

**FINDINGS OF FACT,  
CONCLUSIONS  
AND ORDER**

This matter came before Administrative Law Judge Raymond R. Krause (ALJ) for hearing on October 27, 2011. The Municipal Boundary Adjustment Unit (MBA) initiated this action to determine whether the detachment specified in the petition should be approved pursuant to Minn. Stat. § 414.06. The hearing in this matter was initially convened on January 11, 2011. The evidentiary hearing was continued until October 27, 2011. The evidentiary hearing was held at the Ghent City Hall. An inspection of the subject property was conducted following the hearing and the record closed on that date.

Kayla M. Johnson, Lynn A. Johnson Law Office, LLC, appeared on behalf of Greg Hennen (Petitioner or Mr. Hennen). John A. Engels, Attorney at Law, appeared on behalf of the City of Ghent.

The issue in this matter is whether Petitioner's request to detach the subject property complies with the statutory requirements of Chapter 414. The ALJ concludes that it does not comply.

**FINDINGS OF FACT**

1. On November 22, 2010, Petitioner filed a petition to detach certain property from the City of Ghent (the City).<sup>1</sup>

2. Notice of the initial hearing was effected on December 29, 2010 and January 5, 2011 by publication.<sup>2</sup> On May 10, 2011, the Director of the MBA referred this petition to the ALJ for hearing.

3. The subject property is as described in the Petition for Detachment and consists of approximately 26.83 acres. The property is used exclusively for agricultural purposes at this time. The only structures on the property are two corn cribs.<sup>3</sup>

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<sup>1</sup> MBA Docket File Item 1.

<sup>2</sup> MBA Docket File Item 4.

<sup>3</sup> Testimony of Greg Hennen.

4. Petitioner purchased the property in 1999. He is the sole owner, and has owned it continuously since then. The property was already part of the City when Petitioner purchased it. Petitioner's livelihood is farming.<sup>4</sup>

5. Ms. Dawn Vlamnick is the City Clerk and City Administrator. The City of Ghent is very close to a perfect square in shape.<sup>5</sup> Detachment of the subject property would remove approximately one quarter of the City from the current limits. Detachment would change the shape of the City from a square to an open mouthed shape to the west.<sup>6</sup>

6. The population of the City is 355 as of 2009. There are 154 households in the City.<sup>7</sup> The subject property is bordered by developed real estate on the two sides that adjoin the City (north and east). The land on the remaining two sides is agricultural and abuts Grandview Township.<sup>8</sup>

7. The subject property has water and sewer hook-ups stubbed up to the property line. The utilities were extended up to the subject property by the City in anticipation of future development.<sup>9</sup> The utilities are sufficient to support development of the subject property.<sup>10</sup> No connection to the available hook-ups has been made by Petitioner. The Petitioner may at any time avail himself of these utilities if he chooses to do so.<sup>11</sup>

8. Petitioner receives no City services at this time.<sup>12</sup> Petitioner paid \$888 in City property tax in 2010 and \$1,044 in 2011. The estimated market value of the subject property is \$137,100.<sup>13</sup> The City tax on the subject property is \$512.07 for taxes payable in 2010, as compared to the township tax on similar property of \$32.87.<sup>14</sup> There are no other City imposed fees or charges on the subject property.<sup>15</sup>

9. No portion of the subject property is in the local flood plain according to the official survey by the Federal Emergency Management Agency (FEMA).<sup>16</sup> There are no physical or legal obstacles to development of the subject property.<sup>17</sup>

10. The City has an economic development agency (the EDA). Mr. Ted DeRoode is the former mayor of the City and current president of the EDA.

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<sup>4</sup> Test. of G. Hennen.

<sup>5</sup> Exs. 1 and 4.

<sup>6</sup> Observation of ALJ during site examination.

<sup>7</sup> State Demographer's submission, MBA File Item 12.

<sup>8</sup> Test. of G. Hennen.

<sup>9</sup> Exs. 8 and 9, Test. of G. Hennen, Ronald Sussner, and Dawn Vlamnick.

<sup>10</sup> Test. of R. Sussner.

<sup>11</sup> Test. of D. Vlamnick.

<sup>12</sup> Test. of G. Hennen.

<sup>13</sup> Ex. 2.

<sup>14</sup> Exs. 2, 3, and 7.

<sup>15</sup> Test. of Ted DeRoode.

<sup>16</sup> Ex. 6.

<sup>17</sup> Test. of T. DeRoode and Jerry Schaeffer.

Mr. DeRoode has, on behalf of the EDA, discussed business opportunities with several businesses that have wanted to relocate to, start up in, or expand in the City.<sup>18</sup>

11. In October 2000, the EDA discussed purchasing the subject property from Mr. Hennen for development. He was reported to be interested in selling.<sup>19</sup>

12. In 2001, several businesses expressed an interest in locating or expanding in the City. In response, the EDA offered Mr. Hennen \$1,800 per acre for his property.<sup>20</sup>

13. In 2002, a butcher shop wanted to locate immediately in the City. Again, Mr. Hennen was contacted about selling.<sup>21</sup>

14. In 2003, a poultry enterprise wanted to locate in the City and needed space for semitrailers. Also, a diesel mechanic shop wanted to relocate in the City. The butcher shop continued to want space in the City and a veterinarian wanted to open in the City. The Hendricks Bank expressed a desire to open a branch in the City and a bar and grill wanted to open in the City. All of these expressions of interest were dependent on the City finding land suitable for development. The EDA discussed purchasing the subject property again with Mr. Hennen.<sup>22</sup> Mr. Hennen told the EDA that he would like \$3000 per acre for his land.<sup>23</sup> The subject property was suitable for these development purposes.<sup>24</sup>

15. In 2004, Mr. Hennen wanted an offer to purchase the subject property in writing. The EDA prepared a written offer.<sup>25</sup>

16. The EDA proposed a price of \$3,100 per acre for the subject property in 2004.<sup>26</sup>

17. The EDA received no response from Mr. Hennen in 2004 or 2005.<sup>27</sup>

18. In 2006, Mr. Hennen told the EDA that he would come up with a firm proposal for the sale of the subject property. The EDA offered \$165,000 for the subject property. Many of the businesses that had expressed interest in the City were still interested in 2006.<sup>28</sup>

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<sup>18</sup> Test. of T. DeRoode.

<sup>19</sup> Test. of T. DeRoode and Ex. 10.

<sup>20</sup> Test. of T. DeRoode and Exs. 11 and 12.

<sup>21</sup> Test. of T. DeRoode and Ex. 13.

<sup>22</sup> Test. of T. DeRoode and Ex. 14.

<sup>23</sup> Exs. 15 and 16.

<sup>24</sup> Test. of T. DeRoode.

<sup>25</sup> Exs. 17, 18, and 19.

<sup>26</sup> Exs. 20 and 21.

<sup>27</sup> Exs. 22 and 23.

<sup>28</sup> Exs. 25 and 26.

19. In 2007, the diesel mechanic business was still interested in purchasing land in the City for expansion. The business owner was told by Mr. Hennen that he wanted \$28,000 for three acres. The EDA decided to offer \$6,000 per acre for the subject property. The offer was made formally in writing to Mr. Hennen.<sup>29</sup>

20. In May of 2007, Mr. Hennen turned down the EDA offer but expressed an interest in trading one of his acres for 2 or 3 acres of comparable land elsewhere.<sup>30</sup>

21. In July, 2007, the EDA gave approval for the butcher shop to proceed with its interest in opening in the City.<sup>31</sup>

22. All of the expressions of interest in business expansion in the City were contingent upon there being land available within the City limits that had sewer and water hook ups available.<sup>32</sup>

23. Eventually, the diesel mechanic shop expanded outside the city limits because it could not wait any longer.<sup>33</sup>

24. Lyon County (the County), of which the City is a part, would like to straighten out a curve in Highway 5, running through the City. The County feels this would be desirable from a safety and maintenance standpoint.<sup>34</sup> In order to accomplish this, the County would need easements along the western border of the subject property.

25. There is no land within the limits of the City that is able to be developed other than the subject property. All other suitable land in the City is already developed. The land surrounding the north, east and south of the City are not suitable for development because of flood plain conditions, other environmental issues and because there are no utilities available in those directions.<sup>35</sup>

26. Mr. Jerry A. Schaeffer is a former mayor of Ghent and was involved in the formation of the EDA. Mr. Schaeffer has been approached over the years by a veterinarian business, a butcher shop, a diesel mechanic, a honey business, two trucking companies, and a bank all wishing to locate in the City if land was available. The subject property was suitable for these development purposes.<sup>36</sup>

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<sup>29</sup> Ex. 27, 28, and 29.

<sup>30</sup> Ex. 30, Test. of G. Hennen and T. DeRoode.

<sup>31</sup> Exs. 31 and 32.

<sup>32</sup> Testimony of T. DeRoode, D. Vlamnick, J. Schaefer.

<sup>33</sup> Test. of D. Vlamnick.

<sup>34</sup> Test. of J. Schaefer and Exs. 24 and 28.

<sup>35</sup> Test. of T. DeRoode, R. Sussner, and J. Schaeffer.

<sup>36</sup> Test. of J. Schaeffer.

27. A parcel of land to the east of the subject property and also within the limits of the City is known as the Bluebird Creek development. The land was purchased for residential development for \$1,800 per acre.<sup>37</sup>

28. All offers by the EDA for Petitioner's land were, at the time of the offer, above market value per acre for similar land. The EDA is still willing to buy the land if terms could be agreed upon with Mr. Hennen.<sup>38</sup>

29. The Lyon County Farm Services (LCFS) is an agricultural cooperative. It has several locations. One of its locations is within the limits of the City and is adjacent to the subject property. John Ray Head is the general manager of LCFS. The LCFS business is doing well and is in need of expansion in this part of the County. Recently, LCFS expanded its western facility in Ivanhoe on 21 acres. LCFS would like to do a similar expansion in the City. The first choice of possibilities would be to acquire the subject property. Plans are not far enough along to precisely determine how much land is needed, but some of the subject property would be needed under any scenario. There are no obstacles to development of the subject property for LCFS expansion needs. LCFS's first choice is to remain in the City with City services. If it cannot obtain enough land in the City, LCFS will have to relocate elsewhere. Expansion outside the City is expected to cost between \$6,000,000 and 7,000,000, significantly more than expansion within the City. Repair and replacement of facilities in the City are overdue so expansion must happen relatively soon. The LCFS board has not yet finalized approval of the expansion.<sup>39</sup>

30. Mr. Ron Sussner is the mayor of the City. In his opinion, if LCFS were to relocate outside the City, it would jeopardize the economic viability of the City. The loss of employment and property taxes would be virtually impossible to recover from without land to support new development.<sup>40</sup>

31. The EDA, at all relevant times and currently, has the economic backing to make a purchase of the subject property. The EDA has continued to express interest in buying the subject property for development to the date of this hearing.<sup>41</sup>

32. The parties did not agree on a division of costs in this matter.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

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<sup>37</sup> Test. of D. Vlamnick.

<sup>38</sup> Test. of T. DeRoode and J. Schaeffer.

<sup>39</sup> Test. of John Head.

<sup>40</sup> Test. of R. Sussner.

<sup>41</sup> Test. of T. DeRoode, J. Schaeffer and R. Sussner.

## **CONCLUSIONS**

1. The Administrative Law Judge has jurisdiction in this matter under Minn. Stat. §§ 414.06 and 414.12 and by the assignment by the Director of the MBA to the Office of the Administrative Hearings.

2. Proper notice of the hearing in this matter has been given and it is properly before this ALJ.

3. Petitioner has the burden of proof to demonstrate by a preponderance of the evidence that the statutory criteria for detachment have been met.

4. Minn. Stat. § 414.06, subd. 3, provides in part:

Upon completion of the hearing, the chief administrative law judge may order the detachment on finding that the requisite number of property owners have signed the petition if initiated by property owners, that the property is rural in character and not developed for urban residential, commercial or industrial purposes, that the property is within the boundaries of the municipality and abuts a boundary, that the detachment would not unreasonably affect the symmetry of the detaching municipality, and that the land is not needed for reasonably anticipated future development. The chief administrative law judge may deny the detachment on finding that the remainder of the municipality cannot continue to carry on the functions of government without undue hardship.

5. This proceeding was properly initiated by a Petition for Detachment signed by the sole property owner of the subject area, and therefore satisfies Minn. Stat. § 414.06, subd. 1 and the first criterion of subd. 3.

6. Because the subject area is rural in character, and it has not been developed for urban residential, commercial or industrial purposes, these criterion set forth in Minn. Stat. § 414.06, subd. 3 are met.

7. Because the subject area is within the boundaries of the City and abuts a boundary of the City, the next two criterion set forth in Minn. Stat. § 414.06, subd. 3, are met.

8. The detachment of the subject area would unreasonably affect the symmetry of the City. Detachment would remove approximately a quarter of the City leaving an open-jawed  $\frac{3}{4}$  of a square. The Petition therefore does not satisfy the corresponding criterion set forth in Minn. Stat. § 414.06, subd. 3.

9. Because the subject area is needed for reasonably anticipated future development, the next criterion set forth in Minn. Stat. § 414.06, subd. 3 is not met.

10. Because the detachment of the subject area would affect the City's ability to carry on the functions of government and the City would suffer undue hardship, the Petition fails to satisfy the final criterion set forth in Minn. Stat. § 414.06, subd. 3.

11. Any conclusion more properly denominated a finding is adopted as such.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

### **ORDER**

IT IS HEREBY ORDERED that:

1. The Petition for the Detachment of the Subject Area from the City of Ghent is **DENIED**.
2. The costs pertaining to this matter shall be divided equally between the parties.

Dated: November 9, 2011

s/Raymond R. Krause  
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RAYMOND R. KRAUSE  
Chief Administrative Law Judge

Reported: Digitally recorded

### **NOTICE**

This Order is the final administrative decision in this case under Minn. Stat. §§ 414.06, 414.09, and 414.12. Any person aggrieved by this Order may appeal to Lyon County District Court by filing an Application for Review with the Court of Administrator within 30 days of the date of this Order. An appeal does not stay the effect of this Order.<sup>42</sup>

Any party may submit a written request for an amendment of these Findings of Fact, Conclusions of Law and Order within 7 days from the date of the mailing of the Order.<sup>43</sup> A request for amendment shall not extend the time of appeal from these Findings of Fact, Conclusions of Law, and Order.

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<sup>42</sup> Minn. Stat. § 414.07, subd. 2.

<sup>43</sup> Minn. R. 6000.3100.

## **MEMORANDUM**

Petitioner wishes to detach the subject property from the City of Ghent. His reasoning is that his taxes are higher by virtue of being within the city limits and since he does not, in his view, derive any benefits from being in the city limits, he should not have to pay higher taxes.

Minn. Ch. 414 controls the annexation and detachment of land to and from cities. The criteria for detachment are found in Minn. Stat. § 414.06, subd. 3. There is no argument that Petitioner satisfies the first five criteria. The remaining three criteria require more thorough analysis.

### **Symmetry**

Currently the City is almost a perfect square. If one were to draw a diagonal line from the northwest corner of the City to the southeast corner and draw a second line from the northeast corner of the City to the southwest corner, one would have delineated four quarters of the City. The eastern quarter, from the northwest corner to the center of the City and back to the southwestern corner is roughly the subject property.

Instead of a recognizable and easily manageable square, the City would take on an open jawed appearance with the Town of Grandview extending into the very center of the City. There is no benefit to either the City or to Grandview Township in this irregular layout. In fact, the City would suffer the waste of existing assets as a result. The City has already committed substantial funds to running the sewer and water to the subject property in anticipation of development. Detachment would compromise the value of that investment.

### **Anticipation of Future Development**

From 2000 through 2007, there has been a substantial list of businesses that have indicated serious interest in locating or relocating in Ghent. For a city the size of Ghent, this represents a very significant potential source of employment, housing and tax benefits for the City. All of these businesses evinced an interest in placing their business within the Ghent city limits where utilities are available.

The City and its EDA were anxious to assist in these expressions of interest and made numerous attempts to obtain land for development. The EDA arranged sufficient funding for the purchase and made serious, written offers to buy the only land within the city limits that was suitable for development. Petitioner rejected those offers and the potential businesses were forced to locate elsewhere.

Now, the largest business in Ghent, the Lyon County Farm Services facility, needs to expand and wants to develop the subject property. This is a serious and



substantial development potential for the City. Both the EDA and LCFS have the financial backing to follow through on the project. Sewer and water were stubbed up to the subject property with the express intention of providing for future development. The EDA is interested in buying the land for development even if LCFS does not expand. Clearly, there are reasonably anticipated development possibilities for the subject property.

This is not just a generalized, hoped-for anticipation but a real concrete potential. Furthermore, the need is for this specific plot of land. The City is surrounded by flood plain and other impediments to development. The only land, suitable for development in or around the City is the subject property. This means that it will continue to be the only candidate for any future development.

### **Effect of Detachment on the City**

Detachment of the subject property from the City would foreclose any realistic possibility of future development and economic growth. A city, which is as developmentally landlocked as Ghent, would have a difficult task maintaining its population and tax base without growth. The only way to prevent a choking off of Ghent's economic future would be to annex additional land. If this detachment petition were to be successful, the only annexable land, suitable for development would be the subject property. The City is justifiably concerned that detachment may cause the City to become financially unstable in the near to mid-future.

### **Petitioner's Perspective**

There is nothing wrong with wanting to continue to farm one's land. Whether or not detachment is successful, Petitioner is not required to sell his land. If he never sells it, the possibility of development is still foreclosed. Petitioner does, however, receive a benefit from having his land within the limits of the City. He can use the existing utilities to develop it himself or, if he chooses to sell at some future date, it is clear that the location of the land within the city limits will garner him a premium price over comparable land in the township. The higher tax rate in the City recognizes those benefits appropriately.

### **Summary**

All the criteria of Minn. Stat. § 414.06, subd. 3, must be met in order for an ALJ to approve a detachment. This petition does not meet the criteria that regard symmetry, anticipated future need for development or the ability to continue the functions of government without undue hardship. Therefore, the petition cannot be granted.

**R.R.K.**